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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON

8 TASHA M.,

NO. C18-454-JPD

9 Plaintiff,

10 v.

ORDER AFFIRMING THE  
COMMISSIONER

11 COMMISSIONER OF SOCIAL  
12 SECURITY,

13 Defendant.

14 Plaintiff appeals the final decision of the Commissioner of the Social Security  
15 Administration (“Commissioner”) that denied her application for Supplemental Security  
16 Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§1381-83f, after a  
17 hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Court  
18 AFFIRMS the Commissioner’s decision.

19 I. FACTS AND PROCEDURAL HISTORY

20 Plaintiff is a 30-year-old woman with a 10th-grade education and a GED.  
21 Administrative Record (“AR”) at 479, 548. Her past work experience includes employment as  
22 a temporary laborer and movie theater runner. AR at 480. Plaintiff was last gainfully  
23 employed in 2007. AR at 480.

24 On February 24, 2014, Plaintiff applied for SSI payments, alleging an onset date of

1 January 1, 2014.<sup>1</sup> AR at 367, 462-67. Plaintiff asserts that she is disabled due to attention  
2 deficit hyperactivity disorder, Asperger's syndrome, asthma, depression, Chiari malformation  
3 (type 1), blindness, oppositional defiance disorder, post-traumatic stress disorder, polycystic  
4 ovarian syndrome, and pseudotumor cerebri. AR at 478.

5 The Commissioner denied Plaintiff's claim initially and on reconsideration. AR at 396-  
6 404, 408-14. Plaintiff requested a hearing, which took place on August 11, 2016. AR at 294-  
7 34. On December 14, 2016, the ALJ issued a decision finding Plaintiff not disabled and denied  
8 benefits based on his finding that Plaintiff could perform a specific job existing in significant  
9 numbers in the national economy. AR at 144-60. Plaintiff's administrative appeal of the  
10 ALJ's decision was denied by the Appeals Council.<sup>2</sup> On March 27, 2018, Plaintiff timely  
11 filed the present action challenging the Commissioner's decision. Dkt. 1, 4.

## 12 II. JURISDICTION

13 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§  
14 405(g) and 1383(c)(3).

## 15 III. STANDARD OF REVIEW

16 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
17 social security benefits when the ALJ's findings are based on legal error or not supported by  
18 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th  
19 Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is  
20 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

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22 <sup>1</sup> At the administrative hearing, Plaintiff amended her alleged onset date to February  
24, 2014. AR at 297.

23 <sup>2</sup> Although there is evidence that Plaintiff sought Appeals Council review of the ALJ's  
24 decision (AR at 3-7, 459-61), the record does not contain the Appeals Council's decision  
denying review. Plaintiff's complaint alleges that the Appeals Council denied review on  
January 24, 2018. Dkt. 4 at 2.

1 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750  
2 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in  
3 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,  
4 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a  
5 whole, it may neither reweigh the evidence nor substitute its judgment for that of the  
6 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is  
7 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that  
8 must be upheld. *Id.*

#### 9 IV. EVALUATING DISABILITY

10 The claimant bears the burden of proving that she is disabled within the meaning of the  
11 Social Security Act (the "Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999) (internal  
12 citations omitted). The Act defines disability as the "inability to engage in any substantial  
13 gainful activity" due to a physical or mental impairment which has lasted, or is expected to  
14 last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A),  
15 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are of such  
16 severity that she is unable to do her previous work, and cannot, considering her age, education,  
17 and work experience, engage in any other substantial gainful activity existing in the national  
18 economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th  
19 Cir. 1999).

20 The Commissioner has established a five step sequential evaluation process for  
21 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§  
22 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At  
23 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at  
24 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step

1 one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R.  
2 §§ 404.1520(b), 416.920(b).<sup>3</sup> If she is, disability benefits are denied. If she is not, the  
3 Commissioner proceeds to step two. At step two, the claimant must establish that she has one  
4 or more medically severe impairments, or combination of impairments, that limit her physical  
5 or mental ability to do basic work activities. If the claimant does not have such impairments,  
6 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe  
7 impairment, the Commissioner moves to step three to determine whether the impairment meets  
8 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),  
9 416.920(d). A claimant whose impairment meets or equals one of the listings for the required  
10 twelve-month duration requirement is disabled. *Id.*

11 When the claimant’s impairment neither meets nor equals one of the impairments listed  
12 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s  
13 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the  
14 Commissioner evaluates the physical and mental demands of the claimant’s past relevant work  
15 to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If  
16 the claimant is able to perform her past relevant work, she is not disabled; if the opposite is  
17 true, then the burden shifts to the Commissioner at step five to show that the claimant can  
18 perform other work that exists in significant numbers in the national economy, taking into  
19 consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§  
20 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the  
21 claimant is unable to perform other work, then the claimant is found disabled and benefits may

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23 <sup>3</sup> Substantial gainful activity is work activity that is both substantial, i.e., involves  
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §  
404.1572.

1 be awarded.

2 V. DECISION BELOW

3 On December 14, 2016, the ALJ issued a decision finding the following:

- 4 1. The claimant has not engaged in substantial gainful activity since  
5 February 24, 2014, the application filing date and amended onset date.
- 6 2. The claimant has the following severe impairments: diabetes mellitus;  
7 obesity; history of Chiari I malformation and pseudo tumor cerebri;  
8 other disorders of the nervous system; low vision; affective disorders;  
9 anxiety disorders; and personality disorders.
- 10 3. The claimant does not have an impairment or combination of  
11 impairments that meets or medically equals the severity of one of the  
12 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
- 13 4. After careful consideration of the entire record, the undersigned finds  
14 that the claimant has the RFC to perform medium work as defined in  
15 20 C.F.R. § 416.967(c), except for the following limitations. The  
16 claimant can occasionally climb stairs/ramps and occasionally balance,  
17 but never climb ladders/ropes/scaffolds. She has visual limitations in  
18 left near acuity, left far acuity, left depth perception, left  
19 accommodation, left color vision and left field of vision, so that, she is  
20 limited to monocular vision. She should avoid concentrated exposure  
21 to hazards such as dangerous machinery and unprotected heights. The  
22 claimant retains the mental functional capacity to perform both simple  
23 and complex tasks. She is limited to work/tasks dealing primarily with  
24 objects/things rather than people. She is capable of occasional contact  
with coworkers for work tasks. She is capable of frequent contact  
with the general public but each occurrence should be limited to 10  
minutes or less.
5. The claimant has no past relevant work.
6. The claimant was born on XXXXX, 1988, and was 25 years old,  
which is defined as a younger individual age 18-49, on the date the  
application was filed.<sup>4</sup>
7. The claimant has a limited education and can communicate in English.
8. Transferability of job skills is not an issue because the claimant does  
not have past relevant work.

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<sup>4</sup> The actual date is deleted in accordance with Local Rule CR 5.2, W.D. Washington.



1 supported by substantial evidence. A determination of whether to accept a claimant's  
2 subjective symptom testimony requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929;  
3 *Smolen*, 80 F.3d at 1281. First, the ALJ must determine whether there is a medically  
4 determinable impairment that reasonably could be expected to cause the claimant's symptoms.  
5 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces  
6 medical evidence of an underlying impairment, the ALJ may not discredit the claimant's  
7 testimony as to the severity of symptoms solely because they are unsupported by objective  
8 medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v.*  
9 *Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent affirmative evidence showing that the  
10 claimant is malingering, the ALJ must provide "clear and convincing" reasons for rejecting the  
11 claimant's testimony.<sup>5</sup> *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing  
12 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). *See also Lingenfelter v. Astrue*, 504  
13 F.3d 1028, 1036 (9th Cir. 2007).

14 When evaluating a claimant's subjective symptom testimony, the ALJ must specifically  
15 identify what testimony is not credible and what evidence undermines the claimant's  
16 complaints; general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at  
17 722. The ALJ may consider "ordinary techniques of credibility evaluation," including a  
18 claimant's reputation for truthfulness, inconsistencies in testimony or between testimony and  
19 conduct, daily activities, work record, and testimony from physicians and third parties  
20 concerning the nature, severity, and effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-

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22 <sup>5</sup> In Social Security Ruling ("SSR") 16-3p, the Social Security Administration  
23 rescinded SSR 96-7p, eliminated the term "credibility" from its sub-regulatory policy, clarified  
24 that "subjective symptom evaluation is not an examination of an individual's character[.]" and  
indicated it would more "more closely follow [its] regulatory language regarding symptom  
evaluation." SSR 16-3p. The Court continues to cite to relevant case law utilizing the term  
credibility.

1 59 (citing *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)).

2 2. *Daily activities*

3 Plaintiff contends that the ALJ failed to identify any particular inconsistencies between  
4 her allegations and her activities. Dkt. 12 at 4. She is mistaken, however: the ALJ's decision  
5 discusses multiple specific inconsistencies. For example, the ALJ noted that Plaintiff alleged  
6 "constant" disabling pain and "daily" anxiety attacks, yet also reported an ability to manage  
7 her personal hygiene, prepare meals every day, perform household chores, care for her two  
8 young children, shop for groceries, eat at restaurants, attend church, plan birthday parties,  
9 attend regular appointments, and volunteer in her children's school. AR at 155-56. The ALJ  
10 also contrasted Plaintiff's allegation of a need to lie down multiple times per day due to  
11 headaches and pain with her reports of daily exercise (walking, riding a bicycle, dance videos).  
12 AR at 156. The ALJ noted that Plaintiff alleged debilitating headaches and vision loss, yet  
13 reported that she read on her own and every night to her children. *Id.* The ALJ also referenced  
14 counseling notes indicating that Plaintiff planned to attend community college. *Id.* Finally, the  
15 ALJ found that although Plaintiff alleged that she relied on her mother to complete her  
16 activities of daily living, her mother was disabled and "it is inconsistent for a person with the  
17 disabilities reported by the claimant's mother to be able to provide all the care/assistance for  
18 claimant as she has alleged." *Id.*

19 Plaintiff argues that her activities could be construed as consistent with her description  
20 of her limitations, because she could have completed her activities during the time that she was  
21 not lying down or otherwise incapacitated. Dkt. 12 at 7-8. She also notes that she was not able  
22 to return to community college as she had planned, due to pain. Dkt. 12 at 8-9. Finally, she  
23 contends that the ALJ did not have any information about the extent of Plaintiff's mother's  
24 disability, and failed to note that Plaintiff also received assistance from a state-funded

1 caregiver. Dkt. 12 at 9.

2 Although Plaintiff posits a different interpretation of the evidence than the ALJ's, she  
3 has not shown that the ALJ's interpretation is unreasonable, and therefore has failed to  
4 establish error in the ALJ's decision. *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595,  
5 599 (9th Cir. 1999) ("Where the evidence is susceptible to more than one rational  
6 interpretation, it is the ALJ's conclusion that must be upheld.") (citing *Andrews v. Shalala*, 53  
7 F.3d 1035, 1041 (9th Cir. 1995)). The record contains substantial evidence of Plaintiff  
8 describing her activities in a manner inconsistent with her allegations. *See, e.g.*, AR at 676  
9 (Plaintiff reporting feeling "bored" now that her children were both in school, and she planned  
10 to spend her free time baking and completing art projects), 1240 (Plaintiff reporting at 12:30  
11 p.m. that she had been cleaning her house since 6 a.m., and that she was planning a 5-6-hour  
12 visit to Chuck E. Cheese), 1242 (Plaintiff reporting having fun as a volunteer cashier for six  
13 hours, and explaining that she could not get a job as a cashier because she wanted to be in  
14 school full-time), 1254 (Plaintiff's report that she is too busy to nap during the day), 1283  
15 (same). These reports, among others cited by the ALJ (AR at 155-56), support the ALJ's  
16 finding that Plaintiff's activities were inconsistent with the limitations she alleged. This is a  
17 clear and convincing reason to discount Plaintiff's subjective testimony. *See Orn v. Astrue*,  
18 495 F.3d 625, 639 (9th Cir. 2007) (activities may undermine credibility where they (1)  
19 contradict the claimant's testimony or (2) "meet the threshold for transferable work skills").

20 3. *Objective medical evidence*

21 Plaintiff argues that the ALJ's reliance on inconsistent objective medical evidence is  
22 not a valid reason to discount her subjective statements because that reason cannot solely  
23 support the ALJ's conclusion. Dkt. 12 at 9-10. As discussed *supra*, however, the ALJ's  
24 finding is also supported by the evidence of inconsistency between Plaintiff's allegations and

1 her activities.

2 Furthermore, the ALJ reasonably found that the objective medical evidence was  
3 inconsistent with Plaintiff's allegations, because it showed that her symptoms generally  
4 improved with treatment and any residual symptoms did not lead to disabling limitations. AR  
5 at 153-54. Plaintiff acknowledges that she occasionally reported improved symptoms, but her  
6 symptoms actually fluctuated and therefore did not contradict her allegations. The ALJ cited  
7 substantial evidence of improvement with regard to a number of symptoms (*id.*), but even if  
8 that evidence could be construed as "cherry-picked," as alleged by Plaintiff (Dkt. 12 at 10), the  
9 ALJ's finding with regard to discounting Plaintiff's subjective testimony is supported by  
10 substantial evidence of conflict between her allegations and her activities, for the reasons  
11 explained *supra*. Any error with regard to the objective medical evidence is therefore  
12 harmless. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir.  
13 2008).

14 B. The ALJ did not err in discounting Plaintiff's mother's statements, because those  
15 statements were similar to Plaintiff's statements and the same reasons cited by the ALJ  
for discounting Plaintiff's testimony apply equally to her mother's statements.

16 The record contains two statements written by Plaintiff's mother describing Plaintiff's  
17 symptoms and limitations. *See* AR at 511-18, 591-93. The ALJ summarized Plaintiff's  
18 mother's statements and found them to reiterate Plaintiff's own allegations. AR at 158. Given  
19 the similarity between the testimony, the ALJ gave Plaintiff's mother's statements "limited  
20 weight" for the same reasons he discounted Plaintiff's testimony. *Id.*

21 This is a germane reason to discount Plaintiff's mother's statements. *Valentine v.*  
22 *Comm'r of Social Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (because "the ALJ provided  
23 clear and convincing reasons for rejecting [the claimant's] own subjective complaints, and  
24 because [the lay witness's] testimony was similar to such complaints, it follows that the ALJ

1 also gave germane reasons for rejecting [the lay witness's] testimony"). Although Plaintiff  
2 argues that the ALJ mistakenly assumed that lay witnesses can never independently observe a  
3 claimant's pain or other symptoms (Dkt. 12 at 15-16), the ALJ did not so assume. Instead, the  
4 ALJ found that in this case, Plaintiff's mother's statements described the same symptoms  
5 Plaintiff described, and that therefore the reasons the ALJ discounted Plaintiff's description of  
6 her limitations applied equally to Plaintiff's mother's description. AR at 158. The ALJ's  
7 findings with regard to Plaintiff's mother's statements are reasonable and supported by  
8 substantial evidence, and therefore the ALJ's conclusions shall not be disturbed.

9 C. The ALJ did not err in discounting the opinions of treating physician Jennifer Azen,  
10 M.D.

11 Dr. Azen completed two form opinions describing Plaintiff's physical limitations, in  
12 2014 and 2016. AR at 951-52, 959-61. In both opinions, Dr. Azen indicated that Plaintiff was  
13 limited to part-time sedentary work, with postural and manipulative restrictions, due to several  
14 conditions. *Id.* The ALJ discounted these opinions because he found them inconsistent with  
15 medical evidence showing improvement with treatment and no indication of significant  
16 neurologic/motor/gait deficits. AR at 157. The ALJ also found that Dr. Azen's opinions were  
17 inconsistent with Plaintiff's activities, namely caring for her children, volunteer work,  
18 shopping, aerobic dancing, bicycle riding, and daily walking. *Id.* Plaintiff argues that these  
19 reasons are insufficient to discount Dr. Azen's opinions.

20 1. *Legal standards*

21 As a matter of law, more weight is given to a treating physician's opinion than to that  
22 of a non-treating physician because a treating physician "is employed to cure and has a greater  
23 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751;  
24 *see also Orn*, 495 F.3d at 631. A treating physician's opinion, however, is not necessarily

1 conclusive as to either a physical condition or the ultimate issue of disability, and can be  
2 rejected, whether or not that opinion is contradicted. *Magallanes*, 881 F.2d at 751. If an ALJ  
3 rejects the opinion of a treating or examining physician, the ALJ must give clear and  
4 convincing reasons for doing so if the opinion is not contradicted by other evidence, and  
5 specific and legitimate reasons if it is. *Reddick*, 157 F.3d at 725. “This can be done by setting  
6 out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his  
7 interpretation thereof, and making findings.” *Id.* (citing *Magallanes*, 881 F.2d at 751). The  
8 ALJ must do more than merely state his/her conclusions. “He must set forth his own  
9 interpretations and explain why they, rather than the doctors’, are correct.” *Id.* (citing *Embrey*  
10 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). Such conclusions must at all times be  
11 supported by substantial evidence. *Reddick*, 157 F.3d at 725.

12 The opinions of examining physicians are to be given more weight than non-examining  
13 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Like treating physicians, the  
14 uncontradicted opinions of examining physicians may not be rejected without clear and  
15 convincing evidence. *Id.* An ALJ may reject the controverted opinions of an examining  
16 physician only by providing specific and legitimate reasons that are supported by the record.  
17 *Bayliss*, 427 F.3d at 1216.

18 2. *Inconsistency with objective medical evidence*

19 Plaintiff argues that the ALJ erred in finding that Dr. Azen’s opinions were not  
20 corroborated by the objective record related to her neurologic/motor/gait deficits, because Dr.  
21 Azen’s opinions were based on Plaintiff’s pain. Dkt. 12 at 13. But the ALJ cited a treatment  
22 note dated just a couple of weeks before Dr. Azen’s 2016 opinion, indicating that Plaintiff’s  
23 pain was at a tolerable level and did not prevent her from engaging in normal activities of daily  
24 living with no medication side effects. AR at 157 (citing AR at 966). This is a specific,

1 legitimate reason to discount Dr. Azen's opinion regarding the impact of Plaintiff's pain. *See*  
2 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion  
3 presenting inconsistencies between the opinion and the medical record).

4 3. *Inconsistency with Plaintiff's activities*

5 Plaintiff argues that the ALJ erred in finding that her activities contradicted Dr. Azen's  
6 opinion, because her sporadic activities were in fact consistent with Dr. Azen's opinion that  
7 she could work on a part-time basis. Dkt. 12 at 15. But the ALJ cited Plaintiff's ability to  
8 engage in aerobic dance, bicycling, and daily walking, and those activities are inconsistent with  
9 Dr. Azen's opinion that Plaintiff could not stand or sit for extended periods of time, bend over,  
10 or make repetitive motions. *See* AR at 959. The ALJ did not err in discounting Dr. Azen's  
11 opinions in light of this inconsistency. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir.  
12 2001) (affirming an ALJ's rejection of a treating physician's opinion that was inconsistent with  
13 the claimant's level of activity).

14 Because the ALJ provided specific, legitimate reasons to discount Dr. Azen's opinions,  
15 the ALJ did not err in weighing Dr. Azen's opinions.

16 D. The ALJ did not err at step five.

17 Plaintiff argues that the ALJ erred in finding at step five that she could perform jobs  
18 that required climbing and vision abilities that the ALJ found she did not have. Specifically,  
19 Plaintiff notes that the "cleaner II" job requires occasional ascending or descending ladders,  
20 stairs, scaffolding, ramps, poles, and the like, but that the ALJ found that Plaintiff could never  
21 climb ladders/ropes/scaffolds. Dkt. 12 at 17. Plaintiff also notes that the "laundry laborer" and  
22 "laundry worker II" jobs require occasional near visual acuity, but she cannot perform any  
23 visual work functions with her left eye. Dkt. 12 at 17-18. Because the ALJ failed to resolve  
24 these conflicts between Plaintiff's RFC and the jobs relied upon at step five to find her not

1 disabled, Plaintiff argues that the ALJ's step-five findings are erroneous.<sup>6</sup>

2 In the RFC assessment, the ALJ found that Plaintiff has "visual limitations in her left  
3 near acuity, left far acuity, left depth perception, left accommodation, left color vision and left  
4 field of vision, so that, she is limited to monocular vision." AR at 151. The ALJ's  
5 hypothetical to the vocational expert ("VE") set out similar vision limitations. See AR at 328.  
6 In response, the VE testified that a person with Plaintiff's RFC could perform the jobs of  
7 laundry laborer and laundry worker II (hereinafter "the laundry jobs"). Plaintiff contends that  
8 the VE's testimony deviates from the DOT because the laundry jobs are defined to require  
9 occasional near acuity, and because the VE did not explain this deviation, the ALJ erred in  
10 relying on the VE's testimony at step five. See DOT 361.687-018, *available at* 1991 WL  
11 672992; DOT 361.685-018, *available at* 1991 WL 672987.

12 As used in the DOT, "near acuity" refers to "[c]larity of vision at 20 inches or less."  
13 Selected Characteristics of Occupations Defined in the Revised DOT, app. C (1993).  
14 According to the Commissioner, that Plaintiff has limitations in her near acuity in her left eye,  
15 but not in her right eye, does not necessarily suggest that she lacks the visual capacity to  
16 perform the laundry jobs. Dkt. 19 at 11-12. The Commissioner notes that the record  
17 mentioned Plaintiff's ability to read without glasses (Dkt. 19 at 12 (citing AR at 326, 676)),  
18 from which the Commissioner infers that Plaintiff's had sufficient vision in her right eye to  
19 attain near acuity despite the limitations of her left eye.

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20 <sup>6</sup> Plaintiff also argues that the ALJ erred in failing to ask the vocational expert whether  
21 her testimony was consistent with the Dictionary of Occupational Titles ("DOT"). Dkt. 20 at  
22 6-7. But the ALJ did ask the VE about this issue. See AR at 299-300. The VE stated that any  
23 conflicts between her testimony and the DOT was based on her experience as well as  
24 information gleaned from the Bureau of Labor Statistics. *Id.*

Furthermore, as explained *infra*, Plaintiff has not identified an actual conflict between  
the VE's testimony and the DOT, and thus even if the ALJ had failed to ask about conflicts, the  
error would have been harmless. See *Massachi v. Astrue*, 486 F.3d 1149, 1154 n.19 (9th Cir.  
2007).

1 In reply, Plaintiff argues that the ALJ should have further developed the VE testimony  
2 to determine whether a person with monocular vision could perform the laundry jobs. Dkt. 20  
3 at 7. But the ALJ asked the VE to assume that the hypothetical person had monocular vision,  
4 and the VE testified that such a person could perform the laundry jobs. AR at 328-30. It does  
5 not appear, therefore, that the record contains any “gaps in the evidence of record” that would  
6 require further development. Dkt. 20 at 7.

7 Plaintiff also mentions that her visual impairments were at the Listing level at various  
8 points in time before and after the adjudicated period. Dkt. 20 at 8. Even if this is true, it does  
9 not establish that the ALJ erred at step three or anywhere else in his decision about whether  
10 Plaintiff was disabled *during the adjudicated period*. The evidence cited by Plaintiff does not  
11 suggest error in the ALJ’s RFC finding that her right eye was unimpaired (and this finding was  
12 not challenged in any event), and Plaintiff does not address the evidence of her ability to read  
13 on a regular basis. Because Plaintiff has not shown that she lacks the visual capabilities  
14 required in the laundry jobs, she has not shown error in the ALJ’s finding that she could  
15 perform those jobs. The laundry jobs exist in significant numbers in the national economy (see  
16 AR at 160 (describing more than 300,000 such jobs nationally)), and thus any error with  
17 respect to the cleaner II job is harmless. *See Meanel v. Apfel*, 172 F.3d 1111, 1114-15 (9th Cir.  
18 1999) (declining to address arguments regarding one of two jobs identified by the ALJ given  
19 that the number of positions for one of those jobs constituted a significant number).

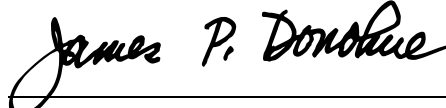
## 20 VIII. CONCLUSION

21 The role of this Court is limited. As noted above, the ALJ is responsible for  
22 determining credibility, resolving conflicts in medical testimony, and resolving any other  
23 ambiguities that might exist. *Andrews*, 53 F.3d at 1039. When the evidence is susceptible to  
24 more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld.

1 *Thomas*, 278 F.3d at 954. While it may be possible to evaluate the evidence as Plaintiff  
2 suggests, it is not possible to conclude that Plaintiff's interpretation is the only rational  
3 interpretation.

4 For the foregoing reasons, the Court AFFIRMS the Commissioner's decision.

5 DATED this 26th day of February, 2019.

6   
7 JAMES P. DONOHUE  
8 United States Magistrate Judge  
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